

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of)	
)	
Service Rules for the 698-746, 747-762)	WT Docket No. 06-150
and 777-792 MHz Bands)	
)	
Revision of the Commission's Rules to)	CC Docket No. 94-102
Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	
)	
Section 68.4(a) of the Commission's)	WT Docket No. 01-309
Rules Governing Hearing Aid-)	
Compatible Telephones)	
)	
Biennial Regulatory Review –)	WT Docket No. 03-264
Amendment of Parts 1, 22, 24, 27, and 90)	
to Streamline and Harmonize Various)	
Rules Affecting Wireless Radio Services)	
)	
Former Nextel Communications, Inc.)	WT Docket No. 06-169
Upper 700 MHz Guard Band Licenses)	
and Revisions to Part 27 of the)	
Commission's Rules)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in)	
the 700 MHz Band)	
)	
Development of Operational, Technical)	WT Docket No. 96-86
and Spectrum Requirements for Meeting)	
Federal, State and Local Public Safety)	
Communications Requirements Through)	
the Year 2010)	

REPLY COMMENTS OF UNION TELEPHONE COMPANY

Union Telephone Company (“Union”), through its undersigned counsel, respectfully submits these Reply Comments in response to the *Report and Order and Further Notice of Proposed Rulemaking* (“700 MHz FNPRM”) in the above-captioned matters, pursuant to section 1.415 of the Federal Communications Commission’s (“FCC’s”) rules.¹

I. INTRODUCTION

A broad mix of commenters representing nationwide, regional, and small, rural carriers, equipment manufacturers, and industry associations agreed with Union that the FCC should not impose overly burdensome geographic benchmark construction requirements combined with a “keep-what-you-use” re-licensing mechanism for 700 MHz licensees.² Union concurs with MetroPCS that the FCC’s geographic coverage and re-licensing proposals “are particularly burdensome for smaller and regional carriers” and that the better approach to ensure service to rural areas is to license spectrum in smaller geographic areas.³ Union strongly urges the FCC to avoid imposing strict performance requirements that would actually work against the goal of facilitating service to rural areas.

Similarly, a diverse group of commenters support a 700 MHz band plan that contains a mix of geographic license areas and spectrum blocks in order to promote competition and

¹ 47 C.F.R. § 1.415 (2006).

² See e.g., Comments of Verizon Wireless at 19-28; Comments of AT&T at 14-19; Comment of CTIA at 3-10; Comments of the Telecommunications Industry Association at 7-8; Comments of Motorola at 34-35; Comments of United States Cellular Corporation at 14-19; Comments of Leap Wireless at 5-7; Comments of MetroPCS at 29-38; Comments of Blooston Rural Carriers at 7-9; Comments of SpectrumCo LLC at 20-30; Comments of the Coalition for 4G in America at 13-17 (“4G Coalition”); Comments of Council Tree Communications at 12-15.

³ Comments of MetroPCS at 35.

access to wireless service in rural areas.⁴ The FCC should adopt a band plan that includes the following elements: (1) create one paired frequency block on a Cellular Market Area (“CMA”) basis and one paired frequency on an Economic Area (“EA”) basis in the Lower 700 MHz band; (2) subdivide the 20 MHz block in the Upper 700 MHz band into two 10-MHz blocks; and (3) license two of the three blocks in the Upper 700 MHz band in geographic areas smaller than Regional Economic Area Groupings (“REAGs”). In particular, the FCC should adopt its proposed band plan for the Lower 700 MHz band and proposal #2 for the Upper 700 MHz band (with the C Block licensed on a CMA basis). Union strongly opposes proposals #1, #3, and #4 for the Upper 700 MHz band because these proposals would effectively deny smaller carriers access to the Upper 700 MHz band and limit opportunities for service to rural areas.⁵

II. THE FCC MUST ENSURE THAT ANY PERFORMANCE REQUIREMENTS DO NOT IMPEDE SERVICE TO RURAL AREAS

In its initial Comments, Union recommended that the FCC adopt the following performance requirements for rural carriers in the event the agency decides to go beyond the substantial service standard: (1) incorporate into the geographic-based build out requirements the substantial safe harbor provision; (2) extend the build out requirements for rural areas; or (3) limit the geographic benchmarks and re-licensing for large licenses.

A. If Geographic Benchmarks are Adopted, The FCC Should Extend the Initial Benchmark From Three to Five Years

As an alternative to these recommendations, Union would also support extending the initial geographic construction benchmark for all license areas from three years to five years, or

⁴ *Ex Parte* Comments of MetroPCS at 3 (filed June 1, 2007) (Listing 21 parties that support the FCC’s proposed Lower 700 MHz band plan and splitting the Upper 700 MHz band 20 MHz block into smaller geographic areas).

⁵ *See* Comments of US Cellular Corporation at 7-9.

exempting Rural Service Area (“RSA”) license areas from the three and five year benchmarks and applying the eight year benchmark to all licensees. As described below, Union also agrees that the FCC should start the clock for any interim benchmarks from the digital television (“DTV”) transition date of February 17, 2009, instead of the license grant date, and it should exclude difficult to serve areas from the relevant geographic service area.

Union recommended in its initial Comments that the FCC lengthen the build out time for carriers serving rural areas. Union agrees with the commenters that recommended that, at a minimum, the FCC extend from three years to five years the initial benchmark requirement to provide coverage to at least 25 percent of the geographic area. Union agrees with Aloha Partners that a “three year milestone would also create significant market pressures in favor of vendors and to the detriment of smaller carriers.”⁶ Aloha Partners is correct that this “would particularly be the case for smaller carriers who almost certainly will be a secondary priority for equipment manufacturers.”⁷ Frontier Communications recommends extending the initial benchmark to five years because small and mid-sized carriers “may not be given priority access to newly manufactured equipment, which could further delay the deployment of services.”⁸ As Union pointed out in its initial Comments, and as these carriers also noted, there is likely to be a lag in equipment availability immediately after the 700 MHz auction. Therefore, the FCC should

⁶ Comments of Aloha Partners at 4; *See also* Comments of Wirefree Partners at 5 (Recommending coverage and performance requirements at five and ten years).

⁷ Comments of Aloha Partners at 4.

⁸ Comments of Frontier Communications at 11.

extend the initial benchmark beyond three years to provide more time for vendors to make equipment available for use in the 700 MHz band.⁹

B. The FCC Should Start the Build Out Clock At the DTV Transition Date

Union also agrees with Aloha Partners that the FCC should start the clock on any interim construction benchmarks until the DTV transition is complete, instead of from the date of the 700 MHz license grant.¹⁰ As Aloha Partners points out, the FCC extended the term of initial authorizations for the 700 MHz Commercial Services band for both auctioned and unauctioned spectrum to ten years from the DTV transition date of February 17, 2009. The FCC concluded that “a longer period should be made available to all licensees in order to provide sufficient time for the recovery of costs related to the development and deployment of new services, especially those based on technologies that are more advanced, more expensive, and which may take longer to develop.”¹¹ For similar reasons, the deadline for meeting any interim geographic benchmark construction requirements should begin from the DTV transition date.

C. The FCC Should Exempt RSAs From the Three and Five Year Benchmarks

Even commenters that generally supported geographic construction benchmarks agreed with Union that the FCC should also consider limiting the benchmarks to licensees that obtain large geographic-sized license areas.¹² While Union supported the Blooston Rural Carriers’ proposal that the FCC retain the substantial service standard for rural carriers and exempt CMA-

⁹ Even nationwide carriers, such as Verizon Wireless, state that a three-year deadline would not provide enough time to complete the 4G standards process (Comments of Verizon Wireless at 28-29, n. 62).

¹⁰ Comments of Aloha Partners at 4; *See also* Comments of Frontier Communications at 11-12.

¹¹ 700 MHz FNPRM at ¶ 84.

¹² *See* Comments of 4G Coalition at 17 (“The lack of similar concerns for EA and CMA licensees suggests that no similar additional requirements beyond substantial service are warranted for smaller licensees”).

sized licenses from the re-licensing mechanism, the Rural Telecommunications Group (“RTG”) and several other commenters proposed that the FCC exempt RSA license areas from the three and five year interim benchmarks.¹³ These commenters supported the use of three and five year benchmarks for non-RSA license areas and the use of the eight year benchmark for all license areas. If the FCC decides to impose construction benchmarks, Union urges the FCC to adopt the benchmark requirements proposed by RTG.

Union agrees with RTG that small carriers providing service to rural areas “require more time to build out their networks due to the additional time and cost involved, as well as the delay in equipment availability.”¹⁴ Similarly, the National Telecommunications Cooperative Association (“NTCA”) pointed out that geographic benchmarks “only serve their purpose, ensuring rural build out and avoiding spectrum hoarding, when imposed on large carriers that obtain licenses covering large geographic territories or licenses covering urban areas.”¹⁵ An exemption for RSA license areas from a three and five year benchmark requirement would ensure that large carriers build out to rural areas while taking into account the economic situation of small, rural carriers. Union also agrees with RTG and the 700 MHz Independents that if the FCC does impose the three and five year benchmarks on rural carriers, the FCC “should afford

¹³ Comments of the Rural Telecommunications Group (“RTG”) at 9-10; Comments of the National Telecommunications Cooperative Association (“NTCA”) at 5-7; Comments of the Wireless Internet Service Provider Association (“WISP”) at 12-14; Comments of Central Wisconsin Communications, *et al.* (“700 MHz Independents”) at 8-10.

¹⁴ Comments of RTG at 9.

¹⁵ Comments of NTCA at 6; *See also* Comments of Council Tree Communications at 12 (Recommending that the FCC limit application of performance requirements to large, incumbent national wireless carriers).

such licensees a safety valve if they are unable to obtain equipment, particularly by a three-year benchmark.”¹⁶

D. The FCC Should Not Include Historical Areas in Determining Compliance With Geographic Build Out Requirements

In its initial Comments, Union recommended that the FCC exclude any land owned, leased, or managed by any federal agency (*e.g.*, Bureau of Land Management, Forest Service, or National Park Service) from the relevant geographic service area for purposes of determining compliance with any build out requirements. As noted in its Comments, Union estimated that the federal government owns approximately 90 million acres in Colorado, Utah, and Wyoming, which Union estimates is approximately 50 to 65 percent of the land in Union’s service territory.¹⁷ Union therefore agrees with MetroPCS that the FCC would also have to exclude any “wilderness, wildlife protected lands, bodies of water, and historical areas and other difficult to serve areas with extremely low populations”¹⁸ In particular, the FCC has stated that tower construction and tower registration are “federal undertakings” under Section 106 of the National Historic Preservation Act (“NHPA”).¹⁹ The FCC and relevant federal and state agencies have adopted a Nationwide Programmatic Agreement (“NPA”) that requires a State Historical

¹⁶ Comments of RTG at 9, n. 12; Comments of 700 MHz Independents at 10 (“If the Commission does impose such interim benchmarks on licensees of RSAs, then it should recognize a safety-valve for RSA licensees if affordable equipment is not widely available, particularly at the three-year mark”).

¹⁷ Comments of Union at 9, n.20.

¹⁸ Comments of MetroPCS at 36; *See also* Comments of Verizon Wireless at 25.

¹⁹ Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, *Report and Order*, WT Docket No. 03-128, 20 FCC Rcd 1073, 1082-84, ¶¶ 24-28 (2004) (“*NPA Report and Order*”) (“Section 106 of the NHPA requires that a federal agency ‘prior to the approval of the expenditure of any Federal funds on an undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register’”) (*NPA Report and Order*, 20 FCC Rcd at 1076, ¶ 3).

Preservation Officer (“SHPO”) or Tribal Historic Preservation Officer (“THPO”), and in some cases the FCC, to review a tower proponent’s determination regarding the effects on historic properties. For the same reasons that carriers should not be penalized for being unable to access federal land for reasons beyond the carrier’s control, the FCC should not punish carriers who are unable to serve certain areas because of an inability to access sites due to potentially adverse effects on historic properties.²⁰

III. CONCLUSION

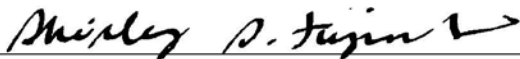
The FCC should not impose on small, rural carriers overly burdensome build out requirements based on geographic benchmarks combined with a re-licensing mechanism. In the event the FCC decides that carriers licensed in small geographic areas should be subject to performance benchmarks beyond the substantial service standard, Union recommends that the FCC adopt the proposals set forth in Union’s initial Comments. Alternatively, the FCC should either exclude RSA license areas from the three and five year benchmarks or should extend the initial benchmark from three to five years. Finally, the FCC should adopt its Lower 700 MHz band proposal and proposal #2 for the Upper 700 MHz band (with the C Block licensed on a CMA basis).

²⁰ RCA proposed that licensees should have the flexibility to claim credit for coverage to government land or exclude such land where it is impracticable. *See* RCA Comments at 6. Union agrees with providing more flexibility to carriers, but reiterates that the FCC should not impose burdensome recordkeeping or filing requirements on small carriers to demonstrate compliance with the benchmarks.

WHEREFORE, THE PREMISES CONSIDERED, Union respectfully requests that the FCC consider these Reply Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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